FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2079 OF 2005
IN
FIRST APPEAL NO. 254 OF 2005

Office notes, office Memoranda of Coram, appearances, Court's orders or directions & Registrar's orders.	Court's or Judge's Orders

Mr. P. R. Naidu for petitioner

Mr. M. H. A. Sayyid for respondents

CORAM: SMT. RANJANA DESAI, J.
1/9/05

P.C.:-

On 8/4/05 this first appeal was admitted by me. The trial court's order was stayed. The trial court's order directing the petitioners/appellants to deposit Rs.5000/- in the court was set aside and a direction was given to the trial court that Rs.5000/- be refunded to the appellants. However, this court had directed that the petitioners should file an undertaking to the effect that in the event of the petitioners-appellants not succeeding in this appeal, they shall hand over

vacant and unencumbered poossession of the suit premises to the plaintiff.

2. The present civil application is filed praying that the petitioners be relieved of that undertaking. It is contended that some wrong and misleading statement was made before this court that the petitioners are earning Rs.25,000/- per month and, therefore, I passed this order.

3. While Mr. Naidu states that misleading statements were made, the learned counsel for the respondents states that he has not made any misleading statements. I must make it clear that this order was passed by me uninfluenced by any statements made by the learned counsel for the respondents

4. Mr. Naidu placed reliance on the judgment in U.P. Residents Employees Coop. House Building Society & Ors. v. New Okhla Industrial Development Authority & Anr., 2004 (9) SCC 670 where the

Supreme Court has held that if any false affidavit is filed in the same court with a view to mislead the court that amounts to contempt of court. There can be no dispute about this proposition and undoubtedly, if at the stage of final hearing of this appeal, this court comes to a conclusion that any misleading statement is made by the respondent, this court will deal with that issue in the light of the judgment cited by Mr. Naidu, if it is found that it is applicable. The learned counsel for the respondent will also have an opportunity to meet this case.

5. At this stage since I am of the opinion that the order was passed by me independently without being influenced by any statement made by the learned counsel for the respondents, the question of relieving the petitioners of their duty to file undertaking does not arise. I, however, clarify that all issues are kept open to be argued at the final hearing of the appeal.

6. Time to file undertaking is extended by six weeks.

7. Civil application is disposed of.

8. Certified copy expedited.